IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 142 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMARSINGBHAI GANPATBHAI CHOUDHARI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 142 of 2004

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 04/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 30/11/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that one F.I.R. was registered against him before Northern Division Prohibition Police Station at C.R.No.1472/2003 on 24/09/03. It was also alleged against the petitioner that two witnesses had given statements against him saying that the petitioner was a very head strong person and that he used to create an atmosphere, wherein, people felt insecure.

3. On the strength of the aforesaid registered offence and two statements of unnamed witnesses, the detaining authority found that the petitioner was required to be detained, with a view to prevent him from indulging in bootlegging activities, which amounted to a threat to public order. Accordingly, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that one offence was registered, it could not be said that there was a threat to public order. It has also been contended that the names of the witnesses were not disclosed to the petitioner, and therefore, the valuable right of the petitioner to make an effective representation against his detention has been denied. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, the learned advocate for the petitioner has argued that the present petitioner was a co-accused with the petitioner of S.C.A.No.17408/2003 in the aforesaid registered offence. She also states that the witnesses whose names have not been disclosed to the detenu in the aforesaid petition and the witnesses in the present petition are also common. Therefore, their statements are also common against both the petitioners.

Hence, the present petitioner and the petitioner in the aforesaid S.C.A. are on par.

7. On hearing, it is found that the present petitioner and the petitioner in the aforesaid S.C.A. were co-accused in the aforesaid offence and that the statements of the witnesses whose names have not been disclosed, are also common in both the matters. Both the witnesses have rendered the same facts to the police officer as well as to the detaining authority.

8. In that view of the matter, the case of the petitioner is on par with the petitioner in the aforesaid S.C.A.. It is not much in dispute that the aforesaid S.C.A. being S.C.A.No.17408/2003 has been heard and disposed of today. Therefore, when the aforesaid S.C.A. has been allowed, then, on the principle of parity, this petition is also required to be allowed and the detenu is required to be released.

9. For the foregoing reasons and for the reasons mentioned in S.C.A.No.17408/2003, this petition is allowed. The impugned order of detention dated 30/11/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Amarsinghbhai Ganpatbhai Choudhari, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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